Supreme Court, U.S.
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No. 05-1211

IN THE

Supreme Court of the United States

YVETTE BOYKIN,
Petitioner

v.

BANK OF AMERICA CORPORATION
d/b/a BANK OF AMERICA and its
wholly-owned subsidiary, EQUICREDIT
CORPORATION OF AMERICA,
BANK OF AMERICA, N.A.
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Is the four-prong analysis enunciated in *McDonnell Douglas Corp vs. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed2d 668 (1973), for the demonstration of unlawful racial employment discrimination prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., an appropriate vehicle for the demonstration of unlawful racial lending discrimination prohibited by the Fair Housing Act ("FHA"), 42 U.S.C. § 3601, et seq. in the case before this Court? If appropriate, should the lower courts rely on a comparative analysis applicable to employment and credit discrimination cases as a standard for petitioner to establish a prima facie case of discrimination based on petitioner's racial identity and that of other approved loan applicants?

2. Is the *McDonnell Douglas* framework an appropriate vehicle for petitioner to establish a prima facie case of discrimination according to the racial composition of the areas or neighborhoods for the comparator loan properties involved? If appropriate, or not, should the lower courts rely on such comparative data in evaluating evidence in the instant case?

3. Did the respondent fail to set forth a legally sufficient legitimate business reason for its denial of petitioner's loan application, and, did the lower courts apply the proper legal standards of proof under *McDonnell Douglas* and *Texas Dep't of Cmty, Affairs v. Burdine*, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.ed 207 (1981) for evaluating petitioner's evidence that respondent's reason is pretext for racial discrimination, an issue which could be fully litigated before the appropriate trier of fact and established by a preponderance of the evidence?

PARTIES TO THE PROCEEDING

Petitioner is Yvette Boykin. She is plaintiff in the District Court and plaintiff-appellant in the Court of Appeals. She brings this action on her behalf. Respondent is collectively Bank of America Corporation, d/b/a Bank of America and its wholly-owned subsidiary, EquiCredit Corporation of America and Bank of America, N.A. Respondent was defendant in the District Court and defendant-appellee in the Court of Appeals. The State of New York Department of Human Rights and United States Department of Housing and Urban Development were defendants only in the District Court.

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Fed Advises Against Jumping to Conclusions on HMDA, *Nonprime News*, Vol. 14; No. 7, Pg.64
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George C. Tepper and Samuel Charnoff, *Racial Discrimination in Lending* (2000 Arent Fox)
< findlaw.com>.....6,12

HUD Handbook 8024.01: Title VIII Complaint Intake, Investigation and Conciliation Handbook,
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Kenneth Harney, U.S. is taking harder look at discrimination in lending, The Baltimore Sun,
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Mark Hamblett, *Judge Halts Spitizer Probe of Loan Discrimination by Banks, New York Law Journal,* (October 13, 2005) <www.*findlaw.com* > 12

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the Eleventh Circuit Court of Appeals (App. at 1a) is No. 05-13494, Non-Argument Calendar, Unpublished, December 21, 2005. The judgment of the District Court (App. at 7a) is reported as No. 03-03467-CV-MHS.

JURISDICTION

The judgment of the Court of Appeals was entered on December 21, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

1. The Fair Housing Act, 42 U.S.C. § 3601 states: "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

2. 42 U.S.C. § 3605 states in pertinent part:

> (a) In General.--It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion,

sex, handicap, familial status, or national origin.

(b) Definition.-- As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loan or providing other financial circumstance - -

(A) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) secured by residential real property.

STATEMENT OF THE CASE

This civil rights case presents questions concerning the proper legal analysis for evaluating claims of lending discrimination under the FHA, the appropriate legal standards for determining what constitutes a legitimate business reason for denying a qualified loan applicant, and the standard of proof required for demonstrating pretext.

I. FACTUAL BACKGROUND

Petitioner Yvette Boykin, an African American resident of the state of Georgia, applied on June 29, 2001, for a refinancing loan from respondent for rental property she owns in Buffalo, New York. Respondent informed petitioner that she had been approved for a loan in the amount of $28,000 based on her credit report and accordingly mailed her loan documents showing the

applicable interest rate and closing costs. Petitioner complied with all of respondent's requests to complete the processing of her loan application. On July 25, 2001, respondent informed petitioner by telephone that her loan application had been denied because the loan was considered a high cost loan according to New York State Banking Regulations.

On August 8, 2001, petitioner filed a housing discrimination complaint with the United States Department of Housing and Urban Development ("HUD") under the FHA, alleging discrimination based on her race and the location of the property in a predominantly African American neighborhood. HUD referred the complaint to the New York State Division of Human Rights ("DHR") for processing under its state statute. After investigating the allegations in petitioner's HUD complaint, DHR issued a no probable cause determination and closed the case. DHR found no evidence of discrimination and reported that petitioner's loan application was denied because closing costs exceeded the respondent's guidelines, which DHR concluded was a legitimate non-discriminatory business reason. (App. at 15a) On December 10, 2001, HUD closed its complaint based on DHR's determination and advised petitioner of her right to file a lawsuit.

After reviewing DHR's administrative file on her case, petitioner learned that DHR ignored her rebuttal information that the loan she sought was not a "high cost" loan because it was for rental property and not petitioner's principal dwelling. Additionally, DHR did not address petitioner's allegations of discrimination based on the racial composition of the neighborhood where the subject property is located. Petitioner asserts that this information was crucial to DHR's investigation and petitioner's contention that the respondent's reason for denying her loan application was